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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 REGINALD HARRIS,

9 Petitioner,

10 v.

11 TIMOTHY WENGLER,

12 Respondent.

Case No. C08-0903RSL

ORDER DENYING  
CERTIFICATE OF APPEALABILITY

13 This matter comes before the Court on petitioner's "Notice of Appeal" and his  
14 "Request/Petition for Certificate of Appealability" under 28 U.S.C. § 2253. Because petitioner  
15 filed his notice of appeal after April 24, 1996, his appeal is governed by the Antiterrorism and  
16 Effective Death Penalty Act of 1996 ("AEDPA"), which worked substantial changes to the law  
17 of habeas corpus. Under the amended version of 28 U.S.C. § 2253(c), a petitioner may not  
18 appeal the denial of a habeas corpus petition unless the district court or the Ninth Circuit issues  
19 a certificate of appealability identifying the particular issues that may be pursued on appeal.  
20 United States v. Asrar, 116 F.3d 1268 (9th Cir. 1997).

21 To obtain a certificate of appealability, the petitioner must make a substantial  
22 showing of the denial of a constitutional right. "Obviously the petitioner need not show that he  
23 should prevail on the merits. He has already failed in that endeavor." Barefoot v. Estelle, 463  
24 U.S. 880, 893 n.4 (1983). Rather, he must demonstrate that the resolution of the habeas petition  
25 is debatable among reasonable jurists or that the issues presented were "adequate to deserve  
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1 encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 483-84 (2000). Having  
2 reviewed the record in this case, including the Report and Recommendation of the Honorable  
3 Mary Alice Theiler, United States Magistrate Judge, the Court finds that the dismissal of  
4 petitioner’s claims for relief is not debatable among reasonable jurists. Petitioner’s claims  
5 should not, therefore, be the subject of an appeal.

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7 For all of the foregoing reasons, petitioner’s request for a certificate of  
8 appealability is DENIED.

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10 Dated this 12th day of January, 2009.

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12 Robert S. Lasnik  
13 United States District Judge  
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